IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

GUARDIANSHIP PETITION NO.6 OF 2000
ALONGWITH
INTERIM PETITION NO.150 OF 2005

Mr.Javed s/o. Abdul Rashid Siddiqui & Anr. ..Petitioners.

Vs.

Aarifa Banu D/o. Abdul Rashid Imamuddin Shaikh ..Respondent.

Mr.O.P.Pandey with Mr.Rajkumar Yadav i/b.M/s.Pandey & Co. for the Petitioners.

Ms.Nasreen Ayubi for the Respondent.

CORAM : S.J. VAZIFDAR, J.
DATED : 14TH FEBRUARY, 2006

P.C. :

Petitioner No.1 is the father of the minor child Faizan, who is now about seven years old. Petitioner N.2 is the mother of Petitioner No.2. The Respondent is the mother of the said minor.

2. Petitioner No.1 seeks an order appointing him as the guardian of the minor child. By an amendment, the Petitioner sought an order directing the Respondent to forthwith hand over the custody of the minor child to him.

3. The Petitioner had filed Interim Petition No.14

of 2000. Interim Petition No.14 of 2000 sought an interim relief appointing Petitioner No.1 as the guardian of the minor child and for an order restraining the Respondent from removing the child out of the jurisdiction of this Court and from parting with the custody of the child to anyone except Petitioner No.1.

4. By an order dated 2.11.2001 in Interim Petition No.14 of 2000 allowed both the prayers. The Petitioner took out Contempt Petition No.106 of 2000 for the alleged non-compliance by the Respondent of the order dated 2.11.2001.

5. By an order dated 11.3.2005 A.S.Aguiar, J. (as His Lordship then was) held that there was no contempt on the part of the Respondent as there was no order to hand over the custody of the minor child to the Petitioner.

6. The above Interim Petition No.150 of 2005 is filed by the Petitioners for an order directing the Respondent to hand over the custody of the said minor child to the Petitioner.

7. The main purpose of this petition and the only

purpose of the above Interim Petition is to seek the custody of the minor child. The Petitioner's case is that Petitioner No.1 divorced the Respondent and that as the father, he is entitled to custody of the minor child.

8. It is not necessary to deal with the merits of the rival contentions between the parties as the above Guardianship Petition and the Interim Petition are not maintainable in view of the judgment of Smt.Nishita Mhatre, J. dated 22nd December, 2005 in Guardianship Petition No.21 of 2005. It has been held that a Guardianship Petition for the custody and access to any minor child would lie in the Family Court.

9. In the circumstances, the Petition is not maintainable before this Court and is returned to the Petitioner for presenting the same to the appropriate Court.